



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 12-10894)
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: Jacob T. Ranish, Esq.

05/12/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On June 15, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 2, 2015. A notice of hearing was issued on February 26, 2016, scheduling the hearing for March 22, 2016. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-I at the hearing. I kept the record open until April 5, 2016, for additional documentation, which was timely received. AX J was entered into the record without objection. The transcript was received on March 30, 2016. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline F. He provided explanations for each alleged debt.

Applicant is 66 years old. He received his graduate degree in 1977. He served in the Air Force on active duty from 1972 to 1992, receiving an honorable discharge. Applicant is married and has two adult children. He has been with his current employer since 2004, where he serves as a tactical expert. He completed a security clearance application in 2012. (GX 1) He has held a security clearance since 1972.

The SOR alleges two charged-off accounts in the amount of approximately \$55,872. Applicant has received a 1099-C for the account in SOR 1.a. (AX A) He also received a 1099-C for the account in SOR 1.b. (AX B)

Applicant admitted that about four years ago he became "significantly over extended." (GX 1) He was not certain, but believed he had about \$90,000 in delinquent debt. (Tr. 42) He acknowledged that it was due to inattention to detail. (Tr. 66) He stated that the delinquent accounts that are now charged-off were lines of credit and a credit card. (Tr. 24) He would transfer balances to other accounts. He acknowledged that gradually it got to the point where he suddenly realized that he was unable to make payments on all of his debts. (Tr. 24) He could not even make minimum monthly payments. He received calls from the creditors. (Tr. 27) He stated that he was "getting harassed by the creditors." He did not want this to become an issue for his security clearance. (Tr. 29) Applicant contacted Freedom Debt Relief (FDR) in the 2010-2011 time frame. He paid them about \$1,200 a month to settle or resolve five accounts. He contacted the creditors and told them about the plan. Three accounts were successfully settled and resolved for less than the full amounts. In 2012, Applicant notified his Facility Security Officer (FSO) about the debts and his work with FDR. (Tr. 30) The other two accounts, which are alleged in the SOR were charged-off.

In his 2012 security clearance application, Applicant noted in Section 26 (Financial Record) that he became severely overextended with credit card debt. He noted that active negotiations were in progress with the bank in allegation 1.a. (GX 1) He also reported his need for a loan modification on his primary residence due to overextended credit. He also listed two international trips taken during that time to visit family. (GX 1)

He noted that he pays monthly installments on his daughter's student loan. (Tr. 23) He spent about \$7,000 for her wedding. He also remodeled part of his home so that his daughter and son-in-law could live with him. He realized that he could not maintain the payments on the lines of credit.

As to SOR allegations 1.a and 1.b, Applicant claims the banks would not negotiate with the FDR. The amount charged-off in 1.a is \$38,306. He does not remember what he bought with the line of credit. He may have transferred balances from

other credit cards. (Tr. 49) However, a credit report shows that the account was already charged-off in November 2011, after having been past-due for some time. (GX 3)

Applicant stated that he received notice that the debt was charged off just before 2013. He was notified by FDR that the bank had written off the account and also advised that he may owe taxes. When the IRS contacted Applicant, he discovered that he could not appeal it, and so he made an initial payment and asked for a payment plan. (Tr. 33) He believes the 2013 taxes are paid in full. (Tr. 30, AX F)

As to why Applicant was charging so much on credit cards, he did not have an answer. He just bought things. (Tr. 42) He stated that he would buy items, charge them on a credit card, and then make the minimum payment. Applicant's credit report reflects that he had extensive available credit with many creditors. (GX 4) He also noted that he would use one card to pay off another card. He acknowledged that was "typical bad judgment." (Tr. 43) He admitted that he also fell behind in his mortgage payments but was able to work with the bank and restructure his mortgage, which is current.

As to the debt in 1.a on the SOR, Applicant claimed that he did not learn about the charge off until the security investigation. (Tr. 51) He opened the line of credit in 2007. He also stated that they offered it to him, and because it was available, he accepted. (Tr. 48) He thinks he used it to transfer other account balances. It first became delinquent in 2011. (GX) He did not make any payments because he thought it was more important to make his car payment and his mortgage. The line of credit was not at the top of the list. (Tr.49) He testified at the hearing that he thought FDR was in the process of settling the account. He, however, never monitored the progress. He did not receive a 1099-C until 2014. (AX J) He contacted FDR and they notified him that they had been sent the 1099-C. (Tr. 34) He filed an amended return a week before the hearing. (AX B) He now owes almost \$10,000 to the IRS. He wants an installment plan of 72 months. (Tr. 52)

As to the debt in 1.b on the SOR, the account was charged off for \$17,566. This was an individual credit card. He believes he opened it in 2007 because it was easy to get credit. This account first became delinquent in 2011. (GX 2) He did not attempt to make any payments after 2011. In 2012, the bank cancelled the debt. However, he did not report the cancelled debt on the tax return for 2012 (Tr. 58) In 2012, he received a refund of \$5,231 for the 2012 tax year. He did not consider paying down his debt because he was working with FDR.

When Applicant contacted FDR he told them about five accounts. Three accounts were resolved. However the two banks that eventually charged off the debts did not agree to negotiate. Applicant never followed up with the two banks. (Tr. 46) He admitted that he had no idea what was going on, and he left it to FDR, without making any inquires or monitoring progress. He noted that he had access to the information online. (Tr. 68) Applicant made payments to FDR; however, he did take two vacations abroad to visit family. (Tr. 62)

Applicant earns about \$120,00 a year. (AX G) He has no new delinquent accounts. He has a monthly net remainder of about \$2,280. He completed a financial counseling course. (AX H) He now adheres to a firm budget. He uses cash for purchases. He has not opened any lines of credit since 2012. (Tr. 39) He has \$237,000 in retirement savings and some money in company stock.

Applicant received a balance of about \$21,000 from FDR from the escrow account with FDR. He used some of the money to pay for the taxes that he owed (Tr. 70) He remembers that he received another 1099-C for another charged-off account. (Tr.59) When questioned at the hearing, Applicant indicated that he would be willing to make payments if the allegation in SOR 1.b had not been charged-off, but he has not made any attempts to do so. (Tr. 63, AX E)

As a post-hearing submission, Applicant wrote a narrative stating that he reviewed his tax filings for tax years 2012, 2013 and 2014. He emphasized that he received a 1099-C from another charged-off account and paid additional taxes. He noted that he filed his amended tax return for tax year 2014. (1.a)

He does not believe he will owe additional tax for tax year 2012, but he will consult a tax professional. He intends to pay any tax that he owes. (AX F, AX J)

Applicant submitted three letters of recommendation. Each attests to his reliability and technical expertise. He is described as a loyal and trusted employee. Applicant's FSO wrote that she has known Applicant since 2004. He has been forthcoming about his financial circumstances. (AX I)

He received awards and medals while in the military, which are numerous, including a joint service commendation medal, and Air Force meritorious service medals and several other meritorious service medals after completion of various assignments. (Tr. 18)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified

information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

Failure or an inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. It also states that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that he incurred delinquent debt from a line of credit and a credit card. The two accounts were eventually charged-off. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant's financial difficulties occurred in the past five years. He was nonchalant about the accumulation of large amounts of credit card debt. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) does not apply. Applicant waited to contact FDR after receiving harassing calls from creditors. I note that he informed his FSO about the matter because he was concerned about his security clearance. He made no attempts to pay on the charged-off accounts, although he had the ability to do so.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant as noted above made efforts to resolve the issue when he could no longer make the minimum payments on his credit lines by contacting FDR and making payment on several non-SOR debts. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem but there are not clear indications that the problem is being resolved, or is under control) partially applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 66 years old. He has been with his current employer since 2004. He is married and has two adult children. He is a mature and educated man. He has held a security clearance without incident since 1972. He served honorably in the military and received numerous medals and awards. He has a wealth of experience in his field.

Applicant admits that he showed poor judgment when he kept opening credit cards and lines of credit without regard to his ability to repay the resulting debts. because he could. He admits buying things, but has no idea what they were. He began transferring balances from one credit card to another. He became concerned about his security clearance and contacted FDR to help him resolve five accounts. He paid them \$1,200 a month to do so. He did not monitor the progress FDR was making. He felt he did what he should by handing the accounts over to them. He did not make any payments on the two charged-off accounts alleged in the SOR, even though they had been delinquent for a period of time. He learned that they were charged-off and he believed that he did not owe any money. He received money from FDR's escrow account, but did not apply any to the charged-off accounts. I find that he spent money for his daughter's wedding, student loans, and home remodeling, because as he stated the two charged-off accounts were of a lower priority. I find his poor judgment and inattention to detail troubling. He had three accounts successfully settled. However, I have doubts about his judgment and reliability because of his failure to pay the debts in the SOR when he had the financial means to do so. Any doubts must be resolved in favor of the Government

Applicant has not presented sufficient information to carry his burden of proof in this case. He has not mitigated the financial considerations security concern. Any doubts must be resolved in favor of the Government.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline :	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge